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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/517,606	12/21/2004	Bernhard Brinkhaus	04236	8529
23338 7590 03/05/2008 DENNISON, SCHULTZ & MACDONALD 1727 KING STREET SUITE 105 ALEXANDRIA, VA 22314				
EXAMINER WOODALL, NICHOLAS W				
ART UNIT 3733		PAPER NUMBER		
MAIL DATE 03/05/2008		DELIVERY MODE PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/517,606

Applicant(s)

BRINKHAUS, BERNHARD

Examiner

Nicholas Woodall

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 December 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5 and 8-11 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5 and 8-11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 December 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/06)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Paper No(s)/Mail Date _____
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 12/13/2007 has been entered.

Allowable Subject Matter

2. The indicated allowability of claims 7 and 8 are withdrawn in view of the newly discovered reference(s) to Errico (U.S. Patent 5,725,528). Rejections based on the newly cited reference(s) follow.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-5 and 8-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Alby (WO 95 27444 A) in view of Errico (U.S. Patent 5,725,528).

Regarding claim 1, Alby shows a device, see Figure 1 below, comprising a bone screw, a plate arrangement, and upper and lower fixation elements. The plate includes at least one opening in which the bone screw is displaceable. The fixation elements

comprise an eccentric bore through which the bone screw can pass through. The bone screw is capable of being movable around its longitudinal axis at a point above the shaft. The upper and lower fixing element disks are capable of being longitudinally disposed and rotatable within the plate or rod. Regarding claim 2, Alby shows a device wherein the plate has a ring along the inner wall of the opening. Regarding claim 3, Alby shows a device in which the upper and lower fixation elements are circular in shape. Regarding claim 9, Alby shows a device where the bone screw is an adjusting screw, and that the upper portion of the screw has a thread that can be attached to the device with a nut. Regarding claims 10 and 11, Alby shows a system of devices comprising plate arrangements, bone screws, and fixation elements as shown in Figure 1 (claim 10). The multiple devices are connected together by bending zones as shown in Figure 1 below (claim 11). Alby fails to disclose the device comprising a multi-part screw including an upper part, a lower part, and a holding element. Errico teaches a device further comprising a multi-part screw including an upper part (120), a lower part (100), and a holding element (130) in order to allow the screw to move polyaxially. Errico further teaches the upper part comprising a spherical receptacle (124) on the lower end of the part, the lower part further comprising a spherical head (108) on the upper end of the part capable of being engaged with the spherical receptacle in a rotational manner, and the holding element further comprising a calotte bearing (the inner surface of the element 130 located below the spherical head) capable of receiving the upper end of the lower part in a freely conical or pyramid-like movement, wherein the holding element is located on the upper end of the lower part and includes the spherical head on the

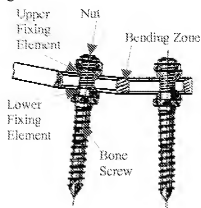
upper end of the holding element. The examiner is interpreting the French word "calotte" to mean a cap or collar, which is the English translation of the French word. It would have been obvious to one having ordinary skill in the art at the time the invention was made to manufacture the device of Alby further comprising a multi-part screw in view of Errico in order to allow the screw to move polyaxially.

Regarding claim 4, the combination of Alby and Errico disclose the invention as claimed except for the lower fixation element being thicker than the upper fixation element. It would have been an obvious matter of design choice to make the lower fixation element thicker than the upper fixation member, since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. In re Rose, 105 USPQ 237 (CCPA 1955).

Regarding claim 5, the combination of Alby and Errico disclose the invention as claimed except for the hole in the lower fixation element having a conical shape. It would have been an obvious matter of design choice to one skilled in the art at the time the invention was made to manufacture the hole in the lower fixation element of the combination of Alby and Errico with a conical shape, since applicant has not disclosed that such solve any stated problem or is anything more than one of numerous shapes or configurations a person ordinary skill in the art would find obvious for the purpose of providing a forming edge in the heating portion or clamp. In re Dailey and Eilers, 149 USPQ 47 (1966).

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Figure 1



Response to Arguments

5. The applicant did not provide arguments for claims 1-5 and 8-11.

Conclusion

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See PTO-892 for cited references the examiner felt were relevant to the application.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nicholas Woodall whose telephone number is (571)272-5204. The examiner can normally be reached on Monday to Friday 8:00 to 5:30 EST..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on 571-272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Nicholas Woodall/
Examiner, Art Unit 3733

/Eduardo C. Robert/
Supervisory Patent Examiner, Art Unit 3733